

A.D. 1.12, Legal Counsel or Representation of Staff
Prepared for signature 4/15/98 - effective 6/1/98

1. Policy. Where applicable, the Department of Correction shall request legal assistance, advice and representation of the Department and its staff through the Office of the Attorney General.
2. Authority and Reference.
 - A. Connecticut General Statutes, Sections 3-125, 4-165, 5-141(d), 18-81 and 52-143.
 - B. American Correctional Association Standards for Adult Correctional Institutions, Third Edition, January 1990, Standard 3-4023.
3. General Principles. The Department shall endeavor to utilize the legal services provided by the Office of the Attorney General. As attorney for this agency, the Office of the Attorney General, subject to judgment, may advise staff on legal matters which relate to their official duties. Such legal assistance may also be afforded in any civil action or proceeding in any state or federal court arising out of any alleged act, omission or deprivation which occurred or is alleged to have occurred while the employee was acting in the discharge of duties or in the scope of employment, except that the state shall not be required to provide such a defense whenever the Office of the Attorney General, based on an investigation of the facts and circumstances of the case, determines that it would be inappropriate to do so. The Office of the Attorney General is available to staff for consultation in areas that effect the performance of their duties within the Department of Correction. The Office of the Attorney General may provide legal advice and assistance on:
 - A. The development of policies and procedures.
 - B. Changes in federal or state law that effect agency policy and procedure.
 - C. Implementation of court decisions relating to specific agency operations or inmate rights.
 - D. Representing Department of Correction staff in legal actions against, or initiated by, the agency and staff to include: filing motions, responding to interrogatories and carrying out any legal defense of the staff for actions pertaining to the official performance of their duties.
4. Legal Access Procedures.
 - A. Agency/Division Level. All actions brought against the Department naming the Commissioner or the Department of Correction as a defendant may be coordinated by the Legal/Legislative Liaison. The Legal/Legislative Liaison shall maintain communication with the Office of the Attorney General on matters related to court decisions, interpretation of statutes, drafting of legislation and formal opinions requested on behalf of the agency.
 - B. Unit Level. Litigation and preparation for defending the agency and staff at the unit level shall be coordinated by the Unit Administrator or designee who shall act as a coordinator between the unit and the Office of the Attorney General. Any staff

member upon being named a part to a lawsuit involving official duties shall notify the Unit Administrator, and shall contact the Office of the Attorney General to seek representation in matters that require legal advice, (e.g., representation, meetings, answering interrogatories, depositions, etc.).

- C. Case Preparation. Nothing in this Directive is intended to interfere with the discretion of the Office of the Attorney General regarding witness strategy, case preparation or legal judgments within the purview of the Office of the Attorney General.
 - D. Requests for Written Attorney General Opinions. Only the Commissioner shall be authorized to issue a request to the Office of the Attorney General for a written legal opinion regarding any matters of departmental or statewide significance, (e.g., good time questions, disciplinary procedures, classification issues, etc.). Staff shall direct all requests for written opinions through the appropriate chain-of-command. Nothing in this section shall restrict staff from seeking advice from the Office of the Attorney General regarding litigation and preparation for defending the agency and staff.
5. Employee Responsibility. All staff shall provide the Office of the Attorney General with relevant documents, subpoenas or other materials related to legal action with which they are involved. Staff shall cooperate in all inquiries, depositions, interrogatories, or other legal processes that will assist the Office of the Attorney General.
6. Official Mail. Each facility shall maintain mailboxes for official correspondence addressed to staff members. Staff members shall regularly check this area for official mail.
7. Service of Process. There are three (3) methods by which a person may be served legal process: (a) directly, in hand, to the individual, (b) directly to the residence of the individual, and (c) by first-class mail. It is common for service of process in lawsuits to be mailed to staff who are being sued in their individual capacity at their place of employment. The papers served may include a copy of the complaint and a waiver form, Attachment A, Notice of Lawsuit and Request for Waiver of Service of Summons.

If the following procedure is not followed with respect to returning the Waiver in accordance with the instructions provided, the plaintiff may seek disclosure of the staff member's address in order to complete service. The staff member may also be held responsible for the costs associated with that service. Therefore, staff shall complete the following upon being served a complaint:

- A. Immediately advise the Unit Administrator that you were served a complaint and provide a copy.
- B. Mail the original waiver in accordance with the instructions provided.
- C. Notify the Office of the Attorney General explaining that you received the complaint and include a copy of the complaint and Waiver. All correspondence shall be mailed to: Office of the Attorney General, MacKenzie Hall, 110 Sherman Street, Hartford, CT 06105-2294.
- D. Retain the original complaint and a copy of the waiver.

8. Subpoenas. Any subpoena summoning a correctional employee as a witness may be served at the facility in which the employee is assigned. The Unit Administrator or designee shall be authorized to accept service of the subpoena, and shall notify the employee as soon as is practicable. If a staff member receives a subpoena to appear in court or deposition as a witness in an employment related issue and requires guidance, the staff member shall call the Office of the Attorney General and advise on the nature of the subpoena. In addition, the staff member shall make two (2) photocopies of the materials enclosed, forward a copy to the Office of the Attorney General, a copy to the Unit Administrator and retain the original.
9. Attorney General Response. Upon receipt of the suit, the Office of the Attorney General may request a preliminary investigation into the allegations contained in the complaint. The Office of the Attorney General will determine whether representation is in accordance with Connecticut General Statutes, Section 5-141(d), and shall inform the employee. Staff should be aware that if they are subject to a lawsuit, they should seek the assistance of the Office of the Attorney General.
10. Exceptions. Any exception to the procedures in this Directive shall require prior written approval from the Commissioner.